

(2007) 10 KL CK 0030

In the High Court Of Kerala

Case No : M.F.A. No"s. 1543 of 2001 and 17, 188, 215 and 341 of 2002

Shaju

APPELLANT

Vs

Babu and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166

Citation : (2008) ACJ 1228 : AIR 2008 Ker 79 : (2007) 4 ILR (Ker) 767

Hon'ble Judges : K. Hema, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.V. Chandra Mohan and T. Venugopalan, for the Appellant; Joe Kalliath, Rajan P. Kaliyath, P.R. Ramachandra Menon and Sarah Salvy, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—All these appeals are filed by the claimants from a common award of the Motor Accidents Claims Tribunal. Appellant suffered personal injuries while travelling by the bus bearing registration No. KLS 1629 on 7.6.1995. The vehicle was proceeding along the Puthur-Marottichal public road from west to east. When the bus reached in front of the High School, Puthur, a group of people armed with dangerous weapons like sword, sticks and country bombs blocked the bus (sic road) and they attacked the passengers of the bus. They threw country bombs into the bus and in the blast the bus was damaged and petitioners who were sitting inside the bus were injured. They were hospitalised and now they are permanently disabled. According to the petitioners, the incident took place due to negligence of the respondent No. 2, who was driving the bus. It is alleged in the petition that even prior to the incident, the driver was aware that the incident would take place. It is further alleged in the petitions that the driver was warned by some local people when the bus reached at Puthur Centre that some people were waiting near the Puthur High School armed with weapons. Had the driver been cautious and taken care not to take the vehicle to

the incident spot, this accident could have been avoided. The respondent No. 1 was the registered owner of the bus and it was insured with the insurance company, respondent No. 3. The respondent No. 1 filed written statement admitting that the petitioners travelled in the bus in question on 7.6.1995. But the injuries of the petitioners not arose out of the use of a motor vehicle. According to them, the miscreants were waiting with weapons in order to attack the petitioners. It was further contended that they were attacked only after they had got down from the bus. So, according to them, it was in no way connected with any negligence on the part of the driver, respondent No. 2. The accident had no connection with the use of motor vehicle. It was also pointed out that no criminal case was registered against the respondent No. 2 for rashness and negligence. Petitioners did not sustain injuries in a road traffic accident but because of the attack of some miscreants. There was no negligence on the part of respondent Nos. 1 and 2. Hence they denied the liability of paying compensation. The insurance company, respondent No. 3, filed written statement taking similar contentions. They also contended that since there was no road traffic accident they are not liable to pay compensation though they have admitted the policy of the bus.

2. Only four claimants were examined in support of the claim petitioners. No independent evidence was adduced to show that even before the incident had occurred the driver was warned by local people that miscreants were waiting to attack the bus, etc. Conductor of the bus was examined to prove that driver of the bus was driving the vehicle on the normal route. When the bus reached at the incident spot, the mob asked the driver to stop the vehicle. But, he was not willing to stop the bus. But the bus was blocked and attack started and somebody tried to inflict a sword cut on the respondent No. 2, since he was not willing to stop the bus. But, fortunately that cut fell on the door by the side of the driver. So, he had no alternative but to stop the bus. It was at that time, the violence started.

3. Exh. A1 was produced by the appellants to prove the case whether the F.I. statement is in connection with the claim. It was given by claimant in O.P. No. 1382 of 1996. Tribunal after considering the F.I. statement found as follows:

It can be discerned from the F.I. statement that all the petitioners are D. Y.F.I. workers and the persons who attacked the bus were B.J.P. workers. According to the statement given by him before the police he along with 29 D.Y.F.I. workers were returning by the said bus involved in this incident. The bus was proceeding towards Marottichal. When the bus reached in front of the High School, Puthur, certain B.J.P. workers armed with weapons including sword, country bomb, etc. blocked the bus. The windscreen of the bus was broken. They shouted "kill him" and entered the bus. One of the persons by name Gopalan received a cut and all of them were asked to get down. But, they did not get down. By that time, they exploded a country bomb outside the bus. Out of this fury, the other passengers in the bus got out of the bus. They were followed by the petitioners also. Then

one person by the name, Abi shouted, "kill him" and threw a bomb against the petitioner in O.P. No. 745 of 1996. Thus, he was injured. So, the F.I. statement given by the informant before the police would reveal that the B.J.P. workers were waiting there for the petitioners herein to attack them and evidently, it was only a political vengeance. But we cannot forget the fact that the destination of none of the petitioners was the incident spot. That is why they had remained in the bus. But, they were compelled to get down when the other passengers left the bus, hearing the bomb explosion.

4. Tribunal found that accident occurred and petitioners suffered injuries while they were travelling by the motor vehicle and, therefore, they suffered injuries due to an accident arising out of the use of motor vehicle. Hence it was found that claims are maintainable u/s 166 of Motor Vehicles Act. But according to the Tribunal, accident arose not due to negligence of the driver and, therefore, there is no liability on the driver and consequently on the owner of the vehicle to pay compensation other than compensation u/s 140. Insurance company was also not liable to pay compensation u/s 166 of the Motor Vehicles Act on the basis of a policy of insurance. Unlike in a claim u/s 163A, for making the driver or owner liable u/s 166, their negligence has to be proved. If driver is negligent in driving and is responsible for the accident, he is liable to pay compensation and owner is also liable vicariously to pay compensation. If the vehicle is insured, insurer has to indemnify them. It is essentially a tortious liability. It is true that for granting compensation u/s 140 or 163A, negligence of the respondent need not be proved. But this is only due to statutory obligation. But to award a claim u/s 166, there must be negligence on the part of the driver or owner of offending vehicle even though proof required in criminal case cannot be insisted by the Tribunal. Preponderance of probability alone need be proved by claimants.

5. Learned Counsel for the appellant relied on the decision of the Apex Court in Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., . In that case, claimant suffered injuries due to a bomb blast in the bus. It was a time when Assam agitation was in the peak and buses were advised by the law enforcing authorities to take police escort. Tribunal found that since it was during agitation time, in view of special circumstances there was need for the driver or conductor to take additional precaution and driver did not request for police protection and since he failed to take "usual police escort" as directed while driving the bus in the road, he was negligent. Tribunal granted compensation. Without upsetting the finding of the negligence, High Court set aside the award stating that accident has no connection with the use of motor vehicle. Apex Court reversed the judgment as follows:

(15) After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place

inside the bus is an admitted fact and the usual police was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant....

(Emphasis added)

This shows that to award compensation, there must be negligence even if accident arose due to the use of motor vehicle and it is that case that there was negligence on the part of the driver or owner to take usual police protection. In this case, Tribunal found that injuries occurred due to use of motor vehicle but there is no negligence on the part of driver or owner. The next case relied on by the counsel for the appellant is Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . In that case, accident occurred due to burst of the tyre and Tempo van turned turtle resulting in the death of a 35 years old man. Even though driver was not rash and negligent, owner has a responsibility to have the tyre in good condition. On these facts, taking Rylands v. Fletcher 1861 All ER 1, Apex Court held that legal heirs of motor accident victim are entitled to compensation. In para 11 of the judgment it was observed as follows:

(11) Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands v. Fletcher 1861 All ER 1, can apply in motor accident cases. The said Rule is summarised by Blackburn, J. thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default or perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

6. Strict liability, i.e., liability without fault, under the rule in Rylands v. Fletcher 1861 All ER 1, was in the case of accidents caused by the escape of noxious things such as sewage or gas. The "strict liability rule" in Rylands v. Fletcher is explained by Sir William Wade in "Administrative Law" as follows:

Even in the absence of negligence the law of tort imposes liability on those who create situations of special danger. This strict liability is imposed by the rule in Ryland v. Fletcher on "the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes", if the

operation involves abnormal risk; and this rule has been held to cover many situations where damage has been done by such things as chemicals, fire and electricity." [See page 786 of the "Administrative Law" by William Wade, 7th Edn.].

Lord Blackburn himself in a case in *Geddis v. Proprietors of Bann Reservoir* (1873) A C 430 , opined as follows:

It is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the legislature has authorised, if it be done negligently.

Even the strict liability rule in *Ryland v. Fletcher* is subject to respondents adducing evidence that accident is not due to their fault and it is due to the act of third party. Therefore, it is for the applicants to claim compensation from the person who caused the accidental injuries. In *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, , tyre burst was the cause of the accident and absence of proper care regarding condition of the tyre by owner and driver shows negligence on their part. Hence Tribunal found on evidence that accident is due to the act of third party and there is no negligence on the part of driver in driving the bus. After finding that there is no negligence on the part of the driver and owner, by applying the principles in *Rylands v. Fletcher*, we cannot direct the driver and conductor to pay compensation except u/s 140 or 163A. Even doctrine of "res ipsa loquitur (the thing speaks for itself)" does not alter the general principle that onus to prove negligence rests upon the claimant. The maxim "res ipsa loquitur" is only a rule of evidence and it will come into play to the help of the claimant only when the circumstances suggest negligence on the part of the driver of the vehicle as held in *Biju K. Francis Vs. K.S.R.T.C.*, . In this case on evidence Tribunal found that driver or owner of the vehicle was found not negligent or in any way responsible for the accident. In such circumstances we cannot impose liability to pay compensation on the respondents. We fully agree with the view of the Tribunal. We also note that except the claimant in O.P. No. 745 of 1996 (M.F.A. No. 1543 of 2001) other claimants suffered very minor injuries like abrasion, etc. Claimant in O.P. No. 745 of 1996 produced a certificate that he has 15 per cent disability. Tribunal did not agree the same but found that he suffered permanent disablement and for that Rs. 25,000 was granted u/s 140 with 9 per cent interest from the date of petition. But all claims u/s 166 were dismissed as driver was not negligent. Driver or owner was not in any way responsible for the accident. We agree with the above findings.

7. Hence claim of compensation u/s 166 was rightly rejected. This finding will not take away the right of the appellants in claiming damages from the person who caused bomb blast. Hence we dismiss all the appeals.